



Direct Transport / Non-manipulation Rule

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PROTECTING NEW ZEALAND'S BORDER

Consignment (transportation, direct shipment, transit, trans-shipment etc.) rule – a historical perspective

- The concept of consignment, transportation etc. rule was introduced under preferential trade agreements / arrangements (PTA) in 1970s or even before. Probably introduced and widely used in Generalised System of Preference in GSP
- Majority of the trade then was in bulk cargo and transiting through third countries, including landlocked countries. This system would have **increased the risk of alteration.**
- Commercial practices in the modern trading environment have changed. Trading systems have changed. International trade is a series of physical flows that may not necessarily use the most direct path but the least cost path.
- The term 'direct consignment' does not reflect reality. In modern transportation system - Transshipment or transportation through countries are a necessity.

A neutral terminology needed to reduce confusion (transshipment or transportation through 3rd parties?)

- **There are different terminologies being used - which create confusion**
- **Direct** consignment (e.g. ASEAN Trade in Goods Agreement. Passing through non-Member states permitted for geographical reason; cannot enter commerce; some operations permitted while in transit)
- **Trans-shipment** (NAFTA. No further production other than loading, unloading while in transit)
- **Direct transport** (PAN-EURO-MED. Transport through other territories permitted provided goods remain under Customs surveillance and do not undergo operations other than ...)
- **Transit and Transshipment** (Trans-Pacific Strategic Partnership (transit or transshipment permitted provided ...))
- Let's first understand the concept clearly. Avoid using a concept which provides misleading interpretation (e.g. direct consignment). Customs have transit or transshipment procedures but not for direct transport or direct shipment

Reasons for consignment, trans-shipment etc. rules

- PTAs require consignment / transshipment provision to ensure imported good is same as the exported good (designed to prevent circumvention and abusive manipulation, alteration or mixing of originating goods)
- Some PTAs require consignments do not go through a third country under a PTA to mitigate risk of being altered or mixed in transit

A number of PTAs justify transit entry for:

- Geographical reason (e.g. landlocked country), logistical reason (availability of transport or warehousing facility), commercial reason (cost consideration)
- Modern production processes and supply chains have impacted on the way international business is conducted and Customs procedures need to cater for this commercial reality
- Transshipment requirements should cater for all these situations

Considerations relating to transport requirements

That:

- Goods not cleared for consumption
- Goods do not enter into trade or commerce
- Goods remain under Customs control / surveillance
- Goods remain under another authority (other than customs)
- Permitting some operations (e.g. loading, unloading preservation of goods)

Note:

- If these requirements are not clearly spelt out / defined, Customs will have difficulty.

Evidential requirements: Promote the use of already available evidence

Problem for an importing country's customs: The country (where a consignment transited) is normally a non-Party to the FTA. That country has no obligation to issue any documentary evidence. Hence, the best option for an importing country's customs is to use the available documentary evidence.

Types of evidence to verify non-manipulation / alteration has taken place:

- Existing documents such as B/L, export /import entries, commercial contract, invoice, packing list, storage documents, etc.
- Container seals and modern electronic devices
- Note - Nairobi (Ministerial) Decision encourages preference-granting Members to refrain from requiring a certificate of non-manipulation for products originating in an LDC unless there are concerns regarding the transshipment.
- Many transit countries do not issue such certificates for transhipped goods.

Not fair to ask a non PTA Party to provide evidence of non-manipulation

- A consignment is exported from Country A (a Party to an PTA) to Country B (another Party to the same PTA)
- Consignment is going through a third country, Country C (not a Party to this PTA). The PTA allows certain operations under certain conditions in a third country.
- If there is a need to verify, the importing country (Country B) should use available commercial documents and transportation documents, container seals, etc. to determine whether an exported good has been altered in the transit country
- It is unfair for an PTA Party to ask a non-party, i.e. Country C, where the consignment will be transited, to provide documentary evidence on non-manipulation. Country C has no obligation.

New Zealand Case Study

- NZ has a PTA with Country X
- Direct shipment rule (summary): an originating good shall retain its originating status if transported directly. Good will lose originating status if it undergoes any operations (other than the permitted ones) or released from customs control in the non-Party [full rule is on next slide]
- Consignments were going through a non-Party's free zone in Country Y), which is not a customs controlled area but managed by the port authority.
- Preference was denied at importation for reason that the consignment did not remain under customs control.
- An appeal to the Customs Appeal Authority was made by the importer. Appeal was successful. Appeal Authority satisfied that the transshipment in the manner described through the Free Zone had no effect on the good's status under the FTA. Consignment was within free zone and not under customs control in this case! But the goods were not available for domestic consumption in Country Y
- Note - Country Y does not issue certificate of non-manipulation.

Direct shipment rule being referred to in the Case Study

Direct Transport

1. *An originating good shall retain its originating status as determined under Article 3.2 provided that it is directly transported to the importing Party without passing through the territory of a non-Party.*
2. *An originating good that is transported through the territory of a non-Party shall not retain its originating status, if the good:*
 - (a) *has undergone any subsequent production or other operation outside the territories of the Parties other than unloading, temporary storage, splitting up of loads for transport reasons, reloading or any other operation necessary to preserve it in good condition or to transport it to the importing Party; or*
 - (b) *has been released from customs control in the territory of a non-Party*